

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 1486

SPONSOR: Regulated Industries Committee and Senator Posey

SUBJECT: Professional Regulation by the Department of Business and Professional Regulation

DATE: April 26, 2006

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	Imhof	RI	Fav/CS
2. _____	_____	CM	_____
3. _____	_____	CJ	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

Auctioneers. The bill requires that applicants for licensure as auctioneers must file a complete set of fingerprints for submittal to the Florida Department of Law Enforcement and the Federal Bureau of Investigation, and pay the cost of processing.

The bill requires that a license application identify the owner, and furnish evidence of compliance with fictitious name provisions if the business is a sole proprietorship and uses a fictitious name.

The bill requires that business applicants provide to the Florida Board of Auctioneers the name of the partnership and its partners, the name of the corporation and its officers, directors, and stockholders who are also officers or directors, the name of the business trust and its trustees.

The bill provides a five-year disqualification from licensure as an auctioneer or apprentice, or as holding an ownership interest in an auction business, for any person whose license has been revoked. The bill requires that the applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business to the department.

The bill provides that the department may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant has committed an act or offense in any jurisdiction that would constitute a basis for discipline of a licensed auctioneer.

Building Code Inspectors and Plans Examiners. The bill permits an applicant to qualify for licensure as a building code inspector or plans examiner if he or she demonstrates a combination of technical education in the field of building code inspection or plans review and experience

which totals two years with at least one year of the experience in construction, building code inspection, or plans review 20 hours of technical education in ethics and professional standards.

The bill requires that the certification examinations for building code enforcement officials must be substantially similar to the examinations administered by the International Code Council. The bill permits building code enforcement officials employed by small counties to provide building code services to another small county.

The bill amends the building code enforcement official's bill of rights to limit the application of the bill of rights to disciplinary investigations and proceedings against licenses under part XII of ch. 468, F.S., and to disciplinary investigations and proceedings relating to the official duties of an enforcement official. The bill specifies that the bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official may hold.

The bill authorizes the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee fails to enforce the Florida Building Code or permitting requirements that the licensee knew were applicable, and for obstructing an investigation or provides forged documents or false evidence or testimony in an investigation.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person, except immediate family members, who performs work that may be under his or her official enforcement authority. It also requires a minimum of two hours continuing education in ethics.

Construction Contracting. The bill authorizes the Construction Industry Licensing Board (CILB) to conduct a criminal records background check on applicants for licensure to determine moral character.

The bill provides that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding. Fifty percent of the requirement may be met by completing a financial responsibility course.

This bill substantially amends the following section of the Florida Statutes: 468.385, 468.609, 468.617, 468.619, 468.621, 468.627, and 489.115.

II. Present Situation:

Auctioneers

Part VI of ch. 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers within the Department of Business and Professional Regulation.

Section 468.382(1), F.S., defines an "auction business" to mean:

a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out

auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions.

Section 468.382(2), F.S., defines an “auctioneer” to mean “any person licensed pursuant to this part who holds a valid Florida auctioneer license.”

Section 468.385, F.S., requires a license before any person can auction or offer to auction any property in this state, unless exempt from licensure under this act. To qualify for licensure as an auctioneer or apprentice a person must:

- Be 18 years of age or older;
- Not have committed any act or offense in this state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.

A person can not be licensed as an auctioneer unless he or she:

- Has held an apprentice license and has served as an apprentice for one year or more, or has completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- Has passed the required examination; and
- Is approved by the board.

An apprentice must be licensed and serve under a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. An apprentice cannot conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor must regularly review the apprentice's records, which are required by the board to be maintained, to determine if such records are accurate and current.

Section 468.385(7)(b), F.S., provides that no business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under this act. The application for licensure must include the names of the owner and the business, the business mailing address and location, and any other information which the board may require. The owner of an auction business must also report to the board within 30 days of any change in this required information.

Section 468.383, F.S., provides that the following activities are exempt from the licensure requirement:

- (1) Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell.
- (2) Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction.
- (3) Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation.
- (4) Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental agency, or an owner of the livestock. The act does not

apply to the auction of agricultural products as defined in s. 618.01(1), F.S., or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products.

(5) Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.

(6) Auctions of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods.

(7) Auctions conducted as a part of the sale of real property by a real estate broker, as defined in s. 475.01(1)(a), F.S.

(8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer.

(9) Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.

Fictitious Name Act

The Fictitious Name Act in s. 865.09, F.S., provides that a person may not engage in business under a fictitious name unless the person first registers the name with the Division of Corporations of the Department of State.

Section 865.09(2)(a), F.S., defines a "fictitious name" as "any name under which a person transacts business in this state, other than the person's legal name."

A person registers a fictitious name by filing a sworn statement listing the following information:

- The name to be registered.
- The mailing address of the business.
- The name and address of each owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number.
- Certification by the applicant that the intention to register such fictitious name has been advertised at least once in a newspaper as defined in chapter 50 in the county where the principal place of business of the applicant will be located.
- Any other information the division may deem necessary to adequately inform other governmental agencies and the public as to the persons so conducting business.

The statement must be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

Building Code Inspectors and Plans Examiners

Part XII of ch. 468, F.S., provides for the regulation of building code administrators, inspectors and plans examiners by the Florida Building Code Administrators and Inspectors Board within the Department of Business and Professional Regulation (department). The board consists of nine members, five of whom are licensees under the board. Applicants for licensure must pass an examination and meet certain experience requirements. Once licensed, individuals must comply with all regulatory provisions.

A building code administrator¹ administers direct regulatory administration or supervision building code activities, including plans review, enforcement, and inspection. A building code inspector² inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner³ reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform. A building inspector⁴ inspects and determines that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws. Sections 468.607 and 468.609, F.S., sets forth the requirements for licensure for the various types and categories of certificate holders.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of chapter 468, F.S.

Section 468.619, F.S., establishes the building code enforcement officials' bill of rights. It provides procedures for the department to question building enforcement officials against whom a complaint has been filed; and establishes time frames to complete any investigation of an enforcement building official and to initiate an administrative action against an enforcement building official. The department must submit an investigation, whether complete or not, to the probable cause panel for review within 180 days from the date of the receipt of the complaint. If the investigation is not complete, the probable cause panel must review and instruct the department to complete the investigation within a time certain and, in no event, greater than 90 days or dismiss the complaint with prejudice.

The building code enforcement officials' bill of rights also provides that:

- The department must inform the licensee of any complaint within 10 days;
- The enforcement official under investigation has the right to be represented by counsel or by any other representative of his or her choice, who shall be present at such time as the enforcement official wishes during the interview; and

¹ See s. 468.603(1), F.S.

² See s. 468.603(2), F.S.

³ See s. 468.603(7), F.S.

⁴ See s. 468.603(6)(a), F.S.

- The department must allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and must be permitted to submit explanatory or mitigating material to the panel for their consideration.

The department is required to investigate all legally sufficient complaints it receives pursuant to the provisions of section 455.225, F.S.

Continuing education

Section 468.627(5), F.S., provides that a building official must provide proof that at least 14 classroom hours of continuing education courses have been completed during each biennium since the issuance or renewal of the license.

Construction Contractors

Construction contracting is regulated under part I of ch. 489, F.S. Construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation. Contractors must either be certified, i.e., licensed by the state to contract statewide, or registered, i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only.

Section 489.140, F.S., creates the “Florida Homeowners' Construction Recovery Fund” (FHCRF) to provide a remedy for consumers who suffer monetary damages because of improper actions by contractors. The FHCRF is a separate account within the Professional Regulation Trust Fund. The FHCRF is funded through a one-half cent per square foot surcharge on building permits collected and distributed pursuant to s.468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 468.631, F.S., provides for the assessment of the surcharge by the appropriate local government, which may retain up to 10 percent of the money to fund projects intended to improve building code enforcement. Additional amounts must be used to fund the regulation of building code administrators and inspectors by the Florida Building Code Administrators and Inspectors Board. Excess monies are transferred to the FHCRF. Any money remaining after the FHCRF is sufficiently funded is applied to the costs of regulating contractors by the CILB.

Section 489.141, F.S., provides that a person may recover from the FHCRF based on a civil judgment against a contractor arising from a contract or based on a board order of restitution for a violation of part I of ch. 489, F.S., relating to building code violations, financial mismanagement, abandonment of a project, or certain false representations.

Section 489.143, F.S., provides the mechanism for and limitations on payment from the fund. The maximum permitted individual claim is \$50,000 and the aggregate amount that may be paid as a result of the actions of any one contractor is \$500,000.

III. Effect of Proposed Changes:

Auctioneers - Fingerprinting Requirement

The bill amends s. 468.385(4), F.S., to require that auctioneer applicants file a complete set of fingerprints taken by an authorized law enforcement officer. The fingerprints must be submitted by the department to the Florida Department of Law Enforcement and the Federal Bureau of Investigation. The applicant must bear the cost of processing.

Auctioneers - Disclosure of Fictitious Name and Ownership

The bill amends s. 468.385(7)(b), F.S., to delete the requirement that the application for licensure as an auction business must include the names of the owner and the business, the business mailing address and location, and any other information which the board may require. It also deletes the requirement that the owner of an auction business must report to the board within 30 days of any change in this required information.

The bill requires that, if the auction business is a sole proprietorship, the license application must identify the owner. It also provides that, if the business uses a fictitious name, the applicant must furnish evidence of compliance with fictitious name provisions in s. 865.09, F.S.

The bill requires that if an applicant is a partnership, corporation, business trust, or other legal entity other than a sole proprietorship, the application must provide the following information:

- The name of the partnership and its partners;
- The name of the corporation and its officers, directors, and stockholders who are also officers or directors;
- The name of the business trust and its trustees; or
- The name of any other form of legal entity and its members.

If the partnership, corporation, business trust, or other legal entity other than a sole proprietorship uses a fictitious name, the applicant must also furnish evidence of compliance with fictitious-name provisions. Within 45 days after any change relating to information required to be disclosed under this section, the applicant must mail the correct information to the department.

Auctioneers - Disqualification Based on Prior Revocations

The bill requires that any person licensed as an auctioneer or apprentice whose license has been revoked may not be an owner, partner, officer, director, or trustee of an auction business for five years after such revocation. The person may not reapply for licensure for five years following such revocation.

Auctioneers - Statement of Financial Responsibility

The bill requires that the applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business to the department. The bill authorizes the

department to adopt rules that specify the financial-responsibility grounds upon which the board may deny licensure. The rules must also define financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy, insolvency proceedings, or assignment of receivers.

Auctioneers - Denial of Applications based on Prior Offenses

The bill provides that the department may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant has committed an act or offense that would constitute a basis for disciplinary action under s. 468.389, F.S., which provides the disciplinary grounds for persons licensed under part VI of ch. 468, F.S. The bill permits the department to deny an application for any acts or offenses that occur in Florida or out-of-state.

Building Code Inspectors and Plans Examiners - Qualifications

The bill amends s. 468.609, F.S., to provide a fifth and sixth option to qualify to take the licensing examination to be a building code inspector or plans examiner.

The bill permits an applicant to qualify if he or she demonstrates a combination of technical education in the field of building code inspection or plans review and experience which totals two years. At least one year of the total experience must be in construction, building code inspection, or plans review experience. The educational component must be a program of at least 400 hours of technical education in the chosen category of building code inspection or plans review. The education must include at least 20 hours of study in ethics and professional standards.

The bill also permits an applicant to qualify for licensure if he or she has completed an associate degree program with a major in building code administration from an accredited institution in construction management.

The bill deletes s. 468.609(2)(d), F.S., which requires that an applicant for certification as a building inspector or plans examiner successfully complete the core curriculum in the building code training program.

The bill requires that the certification examinations must be substantially similar to the examinations administered by the International Code Council. It deletes the requirement that the examinations must be substantially similar to the examinations administered by the Southern Building Code Congress and the Council of American Building Officials.

Building Code Inspectors in Small Counties

The bill amends s. 468.617(4), F.S., to permit building code inspectors, plans examiners, and building code administrators who hold a limited certificate and are employed by a jurisdiction within a statutorily defined small county to provide building code inspections, plans review, or building code administration services to another jurisdiction within a statutorily defined small county. The bill does not specify the statute in which the term "small county" is defined. There

are several different definitions for the term “small counties” in the Florida Statutes ranging from counties having a population of less than 50,000 to less than 150,000.⁵

Building Code Enforcement Official’s Bill of Rights

The bill amends the building code enforcement official’s bill of rights in s. 468.619, F.S., to limit the application of the bill of rights to disciplinary investigations and proceedings against licenses under part XII of ch. 468, F.S., and to disciplinary investigations and proceedings relating to the official duties of an enforcement official. The bill specifies that the bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official holds.

Building Code Enforcement Official - Disciplinary Proceedings

The bill amends s. 468.621, F.S., to authorize the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee fails to enforce the Florida Building Code or permitting requirements within Florida that the certificateholder knew were applicable. The bill provides a violation for a building official who obstructs an investigation or provides forged documents or false evidence or testimony in an investigation.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person who performs work that may be under the enforcement authority of the enforcement official. It creates an exemption for immediate family members, who are defined as including:

a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of the person or the person's spouse, or any person who resides in the primary residence of the enforcement official.

Building Code Enforcement Officials - Continuing Education

The bill amends s. 468.627(5), F.S., to require that a minimum of two hours of the required 14-hour classroom continuing education must be on ethics relating to professional standards of practice, duties, and responsibilities.

⁵ The Florida Statutes provide different definitions for the term “small county.” The term “small county” is defined in s. 339.2818, F.S., relating to the Small County Outreach Program, as a county having a population of 150,000 or less. The term “small county” is defined in s. 163.03, F.S., relating to the small county technical assistance program, to as a county with a population of 75,000 or less. The Florida Administrative Procedures Act defines a small county as any county with an unincarcerated population of 75,000 or less according to the most recent decennial census. *See* s. 120.52(17), F.S. Section 125.271, F.S., relating to emergency medical services, defines a small county as having a population of 75,000 or fewer. *See also* ss. 154.506, 163.05, 163.3177, and 339.2816, F.S. However, s. 110.1228(1)(c), F.S., relating to state group health insurance programs and small county municipalities and school boards, provides that a small county has a population of 100,000 or fewer according to the most recent decennial census. Section 403.7095, F.S., relating to the solid waste management grant program, also defines a small county as having a population of 100,000 or fewer. *See also* s. 403.7095, F.S. Section 212.055, F.S., relating to discretionary sales surtaxes, defines a small county as having a population of 50,000 or less.

The bill amends s. 468.627(6), F.S., to delete the certificateholder's option to provide proof of passing the equivalency test of the Building Code Program within two years after commencement of the program in lieu of taking the core curriculum courses. The bill would require the certificateholder to provide proof of completion of the core curriculum courses.

Construction Contracting – Criminal History Records Check

The bill amends s. 489.115, F.S., to authorize the Construction Industry Licensing Board (CILB) to conduct a criminal records background check on applicants for licensure to determine moral character. The board may not deny licensure for felons who have had their civil rights restored.

Construction Contracting – Net Worth

The bill amends s. 489.115, F.S., to provide that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding. The bill provides that fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

The bill provides that the minimum bonding requirement for Division I certificateholders may be no more than \$20,000 and no more than \$10,000 for Division II certificateholders.

Effective Date

The bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, s. 6 of the State Constitution requires that a bill must pertain to a single subject that is briefly stated in the bill's title. Courts have interpreted this to mean that all provisions of a bill must be "properly connected" to the subject of the bill in a "natural or logical" way.⁶

⁶ See, e.g., *Franklin v. State*, 887 So. 2d 1063, 1078-79 (Fla. 2004); *Env'tl. Confed. of Sw. Fla. v. State*, 886 So. 2d 1013, 1018-19 (Fla. 1st DCA 2004).

The bill contains provisions dealing with the regulation of auctioneers, the regulation of building code officials, and requirements for contractors under the auspices of the Construction Industry Licensing Board. The relating to clause does provide that the bill relates to “professional regulation by the Department of Business and Professional Regulation.” The single subject clause may be implicated as to whether the regulation of these professions has a “natural and logical” connection.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Applicants for an auctioneer license would be required to bear the costs of processing the fingerprints required under this bill to be submitted with the application. According to the Department of Business and Professional Regulation, the Florida Board of Auctioneers will need to adopt a rule to set a fee of \$50.75 per fingerprint check to cover the costs of processing each fingerprint submittal.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 468.617(4), F.S., to permit building code enforcement officials employed by a jurisdiction within a statutorily defined small county to provide building code inspection, plans review, or building code administration services to another jurisdiction within a statutorily defined small county. The bill does not specify the statute in which the term “small county” is defined. There are several different definitions for the term “small counties” in the Florida Statutes ranging from counties having a population of less than 50,000 to less than 150,000.⁷

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

⁷ See n. 5.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
